

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference 1949-21 WO CVP	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/EP2003/014985	International filing date (day/month/year) 30.12.2003	Priority date (day/month/year) 30.12.2003
International Patent Classification (IPC) or both national classification and IPC A23L1/19		
Applicant AMYLUM EUROPE NV		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of sheets.

3. This report contains indications relating to the following items:
 - I ☒ Basis of the opinion
 - II ☐ Priority
 - III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
 - IV ☐ Lack of unity of invention
 - V ☒ Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
 - VI ☐ Certain documents cited
 - VII ☐ Certain defects in the international application
 - VIII ☐ Certain observations on the international application

Date of submission of the demand 31.03.2005	Date of completion of this report 30.08.2005
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Merkl, B Telephone No. +49 89 2399-2138 

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International application No. PCT/EP2003/014985

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-16 as originally filed

Claims, Numbers

1-16 as originally filed

Drawings, Sheets

1/2, 2/2 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-16
	No: Claims	
Inventive step (IS)	Yes: Claims	1-16
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-16
	No: Claims	

2. Citations and explanations

see separate sheet

Item V:

1. D1: US-A-3 030 211 (MCDONALD CLARENCE E) 17 April 1962 (1962-04-17)
D2: US-A-4 834 991 (PORCELLO SAM J ET AL) 30 May 1989 (1989-05-30)
D3: US-A-4 711 788 (MANNS JAMES M ET AL) 8 December 1987 (1987-12-08)
D4: US-A-4 865 859 (PORCELLO SAMUEL J ET AL) 12 September 1989 (1989-09-12)
D5: EP-A-1 254 605 (ASAHI DENKA KOGYO KK) 6 November 2002 (2002-11-06)
D6: WO 03/024253 A (TNO ; DON JOHANNES ANDREAS CLYDE (NL); NOORT MARTIJN WILLEM-JAN (NL);) 27 March 2003 (2003-03-27)
D7: PATENT ABSTRACTS OF JAPAN vol. 1998, no. 12, 31 October 1998 (1998-10-31) & JP 10 179048 A (ASAMA KASEI KK), 7 July 1998 (1998-07-07)
2. None of the cited document discloses a composition comprising the combination of features concerning a lipid fraction as defined in claim 1 of the pending application and a wheat gluten fraction having a specific gliadin content. Therefore the requirements of novelty (Art. 33(2) PCT) are met.
3. The problem of the pending application was the provision of a cream filler composition having a reduced amount of saturated and of partially hydrogenated fats which retains consistency at room temperature and provides good organoleptic properties, which has good whipping and creaming properties and which has good shelf storage properties. D4 is regarded to represent the closest prior art as it also deals with filler creams and their organoleptic properties. D4 neither discloses the vegetable oil as defined in claim 1 of the pending application nor the combination with a gluten fraction having a specific gluten content. There was no hint in the prior art that the combination of said two features would solve the posed problem. Therefore the requirements of inventive step (Art. 33(3) EPC) are met.
4. The claims 1-3 are not clear with respect to the feature "having an increased gliadin content compared to the natural gliadin content in wheat gluten" as the natural gliadin content in wheat differs depending on the kind of wheat and the circumstances of growing. Therefore when comparing the gliadin content of two different kinds of wheat it is not clear whether a different gliadin content is due to an increased gliadin content or due to different natural gliadin contents. This objection could be overcome

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by the introduction of the feature of claim 7 into claims 1-3 and should be dealt with during the natural/regional phases.